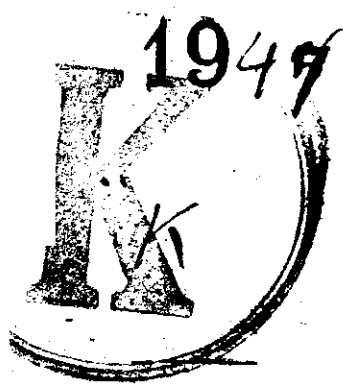

L.D

File No. O Domicile/47

Legal Deptt

A BRANCH

Subject:—

Opinions relating to Domicile

L.D Vol.

File No. O. Domicile/47

Gen. 194 e.

[369-A]

C O N T E N T S.

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SMR 25-6-56
2 Copies.

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The papers are seen and returned with the following remarks:-

The District Magistrate of Poona states that the applicants and others like them want to acquire domicile in the Bombay Province to enable them to apply for the various posts advertised by the Bombay Government; and he wants clear instructions to be issued stating the circumstances under which acquired domicile certificates can be issued to persons from territories lying outside British India and from Provinces other than Bombay, and whether in the latter case such certificates may be refused if the applicants do not fulfil all the conditions laid down in the accompaniment to G.R. No. 1536/34-III dated 1-11-1940.

2. The rules, question and instructions issued as accompaniments to the above-quoted Government Resolution are quite adequate for the purpose. They embody the well-settled propositions of the law relating to domicile. The question of domicile is a mixed question of fact and law. It is only when the relevant facts have been ascertained that the Court or authority is in a posititon to determine whether a person is domiciled. It would be impossible to state exhaustively the various matters which are material to the question. But matters have been sufficiently dealt with in the G.R. and its accompaniments. The questionnaire is well calculated to elicit material information, and the instructions are quite precise.

3. The declaration under section 11 of the Indian Succession Act is intended for the purpose of acquiring a British Indian domicile as distinguished from the domicile in Bombay Province. That declaration, moreover,

is relevant only for the succession, be property , and that tooo where the deceased was not a Hindu, Muhammadan, Buddhist, Sikh or Jaina (section 4 of the Indian Succession Act) .Even for that limited purpose it is naturally not available to persons who are domiciled in other Provinces and have already a British Indian domicile by origins. The declaration under section 11 does not determine the acquisiti n of domicile in the Province of Bombay for purpose s of recruitment to the public services. As shown below it may be one of the many circumstances to be taken into consideration in deciding the acquistion of such domicile .

4. In the matter of the acquisition of domicile for purposes of recruitment to public services in this Province, persons belonging to Portuguese India or other British Indian Provinces are placed on the same footing. and they must prove such acquisiton in the manner laid down in the above-quoted G.R. and its accompaniments.

5. The following re-statement of the principles embodied therein may prove useful to the District Magistrate in solving his immediate difficulties. The presumption of law is always against a change of domicile which must in every case be proved with perfect clearness by the person alleging it. Domicile in the Province of Bombay (as defined in the N.B. at the beginning of the Instructins in Part III of the G.R.),can therefore , be acquired by the fact of residence in the Province together with the intention of continuing to reside there indefinitely. Where a person is said to have changed his domicile the inquiry was propounded by Lord Cairas in Bell v. Kennedy in the following words :- "Whether the person whose domicile was in question had xxxx determined to make and

in fact made the alleged domicile of choice his home, with the intention of establishing himself and his family there and ending his days there. "The only principle which can be laid down as governing all questions of domicile is this that where a party is alleged to have abandoned his old domicile and to have acquired a new one, it is necessary to show that there was both the factum and animus. The intention or state of mind, animus manendi which is required demands that the person whose domicile is the object of inquiry should have formed a fixed and settle purpose of making his principal or sole permanent home in the Province, in effect, a deliberate intention to settle there (Instruction 8). There must be a final and deliberate intention to settle there excluding even a remote or afloating intention o return to the old domicile There must not be in contemplation any event upon the occurrence of which residence in the Province will be brought to an end. The intention must be clearly and unequivocally proved, and the questionnaire suggests evidences use ful for such proof. However, the questionnaire is not intended to be exhaustive of all the relevant circumstances. Any act, event , or circumstance in the state of his mind may be inferred with more or less precision, and it is impossible to formulate any general rule by which the weight due to any particular peice of evidence may be determined, and the question must necessarily be left to the ultimate judgment of the District Magistrates. Expression of intention written or oral may be given in evidence, and to that extent declaration under section 11 may be useful. But such evidence must be accepted with considerable reserve, must be carefully weighed in connection with the circumstane

in which it occurred, and evenn if the expressions are clear and consistent they cannot prevail against a course of conduct leading to an opposite inference. The value of a declaration renouncing thee old domicile is to be tested in the manner laid down by Instruction 4. In proving intention, residence is no doubt material evidence but not decisive by itself. Although residence may be some small prima facie proof of domicile, it is by no means to be inferred from the fact of residence that domicile result: Special circumstances under which the person resided may make it immaterial or of less value as stated in Instruction 7. The motive of residence, such as service, is important in so far as its character may throw light on the whole state of mind and be evidence of the existance or non-existence of the necessary intention. The absence of a fixed residence is important as evidence, and may be sufficient to show that a final decision with regard to the Province has not been reached . On the other hand if the intention of permanently residing in the Province exists , a residence in pursuance of that intention however short willestablish the domicile. If the physical fact of residence is accompained by the required state of mind, neither its character nor its duration is in any way material.

Id/- P.M.L.
dt/- 6/5/47/

Remembrancer of Legal Affairs.

U.R. to P. &S.D. No. 4623 , dated the 6th May 1947.

V.v.k. 1/5/58/